REMARKS

Reconsideration and withdrawal of the rejections of the claimed invention is respectfully requested in view of the amendments, remarks and enclosures herewith, which place the application in condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1, 4-14 and 18-24 are pending in this application. No new matter has been added by this amendment.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112.

II. THE 35 U.S.C. 103(a) REJECTION HAS BEEN OVERCOME

Claims 1, 4-14 and 18-24 were rejected as allegedly being obvious by Paul (U.S. Patent 5,556,030) The applicants request reconsideration of the applicants' previous response (which is provided on page) in light of the additional comments below:

Additional comments

1. The dispeser of Paul does not serve to control the release of the volatile substance with two control elements. Part of the confusion may stem from the different views of the Paul dispenser.

Figure 7 shows element 58 (a fragrance bearing member which comprises a solid construction or a gel securely retained between permeable membrane layers 50 and 55 – see col. 13, lines 32-34). The permeable membrane layers can be interpreted as correlating to the first control element of the applicants' invention (additional difference explained in section 2. below).

However, side wall or panels 22 and 23 in Paul are not control elements, but rather packaging for the dispenser. The packing is torn open to expose the permeable membrane layers 50 and 55 to the atmosphere, i.e. the volatile substance passes through only one layer, not two.

The holes 33-36 and the elongated sealing strip 38 are part of the embodiment of Figure 2 which differs from Figure 7. Element 30 is the fragrance bearing member (akin to element 58) wherein the fragrance diffuses into the a holding zone or pouch 24. The holes 33-36 are over this holding zone and not the permeable membrane layer 50 or 55, i.e. the structure of Figure 2

also does not have two control elements working in concert as in the applicants' claimed dispenser.

2. The statement in the Office Action that the Paul dispenser comprises a reservoir "wherein in first control element is a pressure-sensitively adhesive" (Page 2, second and third lines from bottom) is not found in Paul. The "first control element 50" is a permeable membrane layer. See col. 11, lines 23-31 of Paul:

> "By constructing permeable membrane 50 in the manner consistent with the molecular structure of the air freshening/deodorizing composition being employed, the rate of dispersion of the air freshening/deodorizing composition into the ambient air is precisely controlled automatically. Furthermore, the use of permeable membrane 50 assures a continuous, dependable and completely repeatable rate of dispersion of the air freshening/deodorizing composition into the ambient surroundings."

See also col. 13, lines 47-59

> "Furthermore, permeable membrane layers 50 and 55 may be formed from any suitable material capable of providing a layer compatible with side walls or panels 22 and 23, ***as well as incorporating a pore size consistent with the molecular structure of the fragrance to be dispersed therethrough***. Preferably, permeable membrane layers 50 and 55 are formed from polymeric plastic films or sheets which are impermeable to liquids but allow vapors to pass therethrough. Generally, any suitable polymeric film or sheet can be employed, such as sheets or films formed from polyurethane, polyethers, polyesters, polypropylenes, polystyrene, and combinations thereof." (emphasis added)

There is no disclosure in Paul that these control elements 50 or 55 are a pressure-sensitive adhesive.

In addition to the fact that Paul does not have two control elements, it also follows that Paul's first control element is not adhesively attached to the second control element as in the applicants' claimed invention as Paul's first control element is not comprised of a pressure-sensitive adhesive.

3. The number of gaps in the second control element is not simply a matter of design choice as asserted in the Office Action, but is essential for determination of the degree of coverage of the first control element and thereby controlling the predetermined release rate of the volatile substance.

4. As there appears to be no further advancement in the prosecution of this application (and in light of recent changes to RCE practice), if the reevaluation of the applicants arguments in light of these comments does not result in and allowance the next Office communication, there is a likelihood that the next response would be an Appeal of any further rejection of the claims. However, the applicants welcome any suggestions the Examiner may have for placing the claims in condition for allowance and avoiding Appeal.

Arguments from 28 November 2008 reply

Paul differs from the applicants' claims as amended in that Paul does not teach or suggest that the reservoir is covered on its top face with a layer of material impermeable to the volatile substances, i.e. what is being interpreted as being equivalent to the applicants' first control element from within the Paul reference is on ***both sides*** of Paul's reservoir; elements (50) and (55) are mirror images which surround the "reservoir" in the teachings of Paul and are both permeable membrane layers.

Paul also differs from the applicants' claims in that there is no teaching that there is joint action between the first and second control elements of the applicants' claimed dispenser to control the dispensation of the at least one volatile substance. The user in Paul, even when accepting the position that element (22) of Paul is a control element, controls the dispensation of the volatile substance by pulling off the sealing strips, i.e. only the first control element in Paul has any effect in dispensing the volatile substance.

In contrast, for the applicants' claimed dispenser, the second control element acts as a means for controlling the size of the surface of the first control element and as such the dispensing of the volatile substance is a result of a joint action between the first and second control elements.

Further still, Paul does not teach or suggest that:

(1) the second control element is open-pore foam or is a web material (claims 18 and 19);

(2) the second control element is uncovered in new claim 23 unlike the "control element" of Paul (The assertion presented in the "Response to Arguments" section of the final rejection which stated that element (22) of Paul is a "control element" is believed to be in error. However,

even the final rejection acknowledges that such an assertion is true only when combined with the flap (51) of Paul which has to be removed to dispense the scent.)

Therefore, the applicants' claims as amended are not obvious as all of the applicants' claimed elements are not taught and suggested by the Paul reference.

CONCLUSION

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution.

Respectfully submitted,
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